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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/763,058	04/27/2001	Isabelle Bara	05725.0857	1997

7590

01/23/2003

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EXAMINER

DEWITTY, ROBERT M

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 01/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/763,058

Applicant(s)

BARA ET AL.

Examiner

Robert M DeWitty

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-- **Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --**
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 30,33,36,41-50,60-69 and 75-85 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 30, 33, 36, 41-50, 60-69, and 75-85 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claims 30-85 are pending in the instant application. Acknowledgement is made of Applicant's Election of Species submitted 10/31/02. Claims 30, 33, 36, 41-50, 60-69, and 75-85 read on the elected species.

Election/Restrictions

1. Applicant's election with traverse in Paper No. 9 is acknowledged. The traversal is on the ground(s) that the office has not shown there would be a serious burden to examine all of the claimed species. The claimed species would require a serious burden because of the divergent matter between the species, i.e., polysaccharides and polyacrylates for gelling agent, talc and iron oxide for a lamellar filler, calcium nitrate and calcium chloride for salt, and ethanol and glycol ethers for solvent. The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 30, 33, 36, 41-50, 60, 63-69, and 77-85 are rejected under 35 U.S.C. 102(b) as being anticipated by Roulier (WO 97/17055).

Roulier teaches a cosmetic of rigid gels containing hydrophilic gelling agents, and

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are generally provided as sticks, pencils, or bars (Abstract). The compositions of Roulier are present in an aqueous matrix (page 2, lines 1-3). The hydrophilic gelling agents can be microorganism exudates such as xanthan gum (page 5, lines 3-6). The compositions may contain inorganic or organic fillers (page 5, lines 19-20). The fillers can be lamellar or spherical structure or mixtures thereof (page 6, lines 1-3). Fillers of inorganic lamellar types can be talcs or magnesium silicates in the form of particles smaller than 40 micrometers (page 6, lines 12-14). Fillers of inorganic type can also be oxides of zinc and titanium, and calcium cabonate (page 7, lines 11-19). Oils may also be used, such as olive oil (page 9, lines 17-19). At the example of page 16, water is present in an amount of 49% (subtracting the other ingredients from 100%).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 30, 33, 36, 41-50, 60-69, and 75-85 rejected under 35 U.S.C. 103(a) as being unpatentable over Roulier (WO 97/17055).

Incorporating the rejection from above, Roulier teaches a cosmetic of aqueous rigid gels containing hydrophilic gelling agents. Roulier does not teach the use of salt such as magnesium chloride and sodium chloride, however Roulier does teach the use of calcium cabonate. Calcium carbonate is listed in the instant specification as being

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suitable for use as a salt (page 14, instant specification). It is not clear that there is a necessity to use a salt such as magnesium chloride or sodium chloride, and the use of either is mere optimization of the instant invention. Further, the substitution of calcium carbonate with a salt such as magnesium chloride and sodium chloride would have been within the ordinary skill of one in the art.

Whereas Roulier does not teach a hydrophilic/lipophilic balance of at least 7, it is the examiner's position that such a limitation would be obvious in the composition because Roulier teaches using ingredients as the instant invention.

Roulier teaches using oils such as glyceryl triisostearate or diglyceryl triisostearate (page 9, lines 25-26). The substitution of such oils with those listed in claim 76 would have been within the skill on one in the art.

Claims limited to the Election Species 1-10 as set forth in the Election (Paper #9) would be allowable.

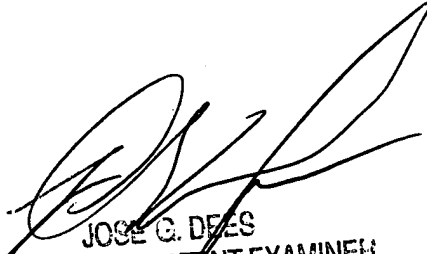
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M DeWitty whose telephone number is 703-308-2411. The examiner can normally be reached on 9:00am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 703-308-4527. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7924 for regular communications and 703-308-7924 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

RMD
January 14, 2003


JOSE G. DEES
SUPERVISORY PATENT EXAMINER
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